

Appendix E: Missouri Department of Conservation Public Comment Response Letter

From: **Midwest Eagle, FW3** <midwesteagle@fws.gov>

Date: Mon, Jan 28, 2019 at 10:24 AM

Subject: Fwd: [EXTERNAL] ROCK CREEK WIND FACILITY: PROPOSED EAGLE TAKE PERMIT AND ENVIRONMENTAL ASSESSMENT

To: Sara Schmuecker <sara_schmuecker@fws.gov>

----- Forwarded message -----

From: **Jennifer Campbell** <Jennifer.Campbell@mdc.mo.gov>

Date: Wed, Jan 9, 2019 at 6:16 AM

Subject: [EXTERNAL] ROCK CREEK WIND FACILITY: PROPOSED EAGLE TAKE PERMIT AND ENVIRONMENTAL ASSESSMENT

To: midwesteagle@fws.gov <midwesteagle@fws.gov>

Cc: Anthony, Ryan <ryan_anthony@fws.gov>, Ledwin, Jane <jane_ledwin@fws.gov>, McPeck, Kraig <kraig_mcpeek@fws.gov>, Herrington, Karen <karen_herrington@fws.gov>

U.S. Fish and Wildlife Service:

This message is in response to a public comment opportunity on the proposed Eagle Take Permit and Environmental Assessment for Rock Creek Wind Facility (Project). The applicant, Rock Creek Wind Project LLC, requests a 30-year permit under the Bald and Golden Eagle Protection Act for take of bald eagles at its 150-turbine facility near Tarkio, Missouri (Atchison County) in northwestern Missouri. The proposed federal action is issuance of an Eagle Take Permit; thus, an Environmental Assessment and associated documents were provided for public comment.

The federal action proposed by the U.S. Fish and Wildlife Service (USFWS) is further summarized from federal register materials:

The proposed Eagle Take Permit (ETP) for the Rock Creek Wind Facility would allow the taking of 18 bald eagles annually, or 546 bald eagles over a 30-year permit term. In the Draft Environmental Assessment, the USFWS acknowledges that the estimated level of take is likely a conservative overestimate, with the actual take level potentially being below or well below the estimated annual take level.

The Draft Environmental Assessment considers two alternatives: No Action Alternative (operating without an incidental take permit); or issuance of an ETP per the Eagle Conservation Plan for take up to 546 bald eagles over the 30-year permit term.

If the No-Action Alternative were pursued, no monitoring or adaptive management would be required by USFWS. The Project would voluntarily monitor eagle take, but monitoring would not be enforced. The Project would not be issued a take permit. The USFWS would expect the Project to avoid and minimize take of bald eagles, so the Bald and Golden Eagle

Protection Act would not be violated, however the measures would be voluntary. Actual level of take could not be assessed, nor could impacts of the Project on local or national bald eagle population.

The Permit Issuance Alternative (Alternative 2) would allow eagle take, but also establish take level triggers for adaptive management response. This alternative requires a five-year evaluation related to bald eagle take, at which take would be recalculated for the remaining 25 years of the permit based on the first five years of post-construction monitoring data.

As noted in the Environmental Assessment, the estimated bald eagle population in the Mississippi Flyway Eagle Management Unit (EMU), where this wind project would be permitted for eagle take, is 27,334 eagles. The EMU of this project is composed of the states of Alabama, Arkansas, Indiana, Illinois, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin, and the Canadian provinces of Saskatchewan, Manitoba and Ontario. USFWS estimates that the maximum level of allowable take within the 14-state EMU is 1,640 bald eagles annually. To date, the USFWS has permitted the take of 87.12 bald eagles annually in the EMU. With previously permitted projects (87.12 eagles) and the proposed take permit for this Project (18.17 eagles), the total permitted take within the EMU could be 105 bald eagles annually, or less than 1% of the EMU.

The USFWS also considers the Local Area Population (LAP) of eagles as significant for permitting eagle take. The LAP includes bald eagles within 86 miles of project turbines. The USFWS estimates the LAP including this project contains 849 bald eagles and that annual take of 1-5% of a LAP is sustainable under the Bald and Golden Eagle Protection Act's preservation standard. Thus, the annual take proposed by this Eagle Take Permit would be approximately 2.1% of the LAP.

The proposed Project Eagle Conservation Plan includes contracting with an independent third-party to complete formal post-construction eagle fatality monitoring study for the first two years after the Rock Creek Wind Farm goes into operation. Searches during the first year of operation will be conducted twice monthly from December 1 through March 31 over a 100-meter search radius from the turbine base, including the road and pad and once monthly from April 1 through October 31. The number or percent of turbines searched in post-construction monitoring was reported as 100% (Table 7 in Appendix A - Eagle Conservation Plan). Post-construction visual nest monitoring will occur monthly February through May at Turbine G-8, where a nest was identified during construction. Searcher efficiency and carcass persistence trials will be conducted. At year 5 of project operations, the Company will also complete an additional full year of eagle fatality monitoring (via eagle scans) by a qualified third-party following the protocols described in section 8.1 Post Construction Fatality Monitoring (Eagle Conservation Plan) or as agreed to by the Company and the USFWS. Similar third-party monitoring will be

completed thereafter on five-year intervals through the operational life of the project (i.e., Year 10, 15, 20, 25).

Avoidance and Minimization measures are reported in the Eagle Conservation Plan. These include: siting the project away from suitable habitat that would concentrate large number of eagles for extended time; siting individual turbines 1,000ft or more from forest patches, wetlands and riparian corridors; minimizing the number of turbines sited in areas of suspected high use, such as the Tarkio River, East Fork Little Tarkio Creek, and Tarkio Prairie CA; minimizing habitat disturbance by use of existing public and private roads as much as possible; using turbines with monopoles (non-lattice structures) that will not attract birds for perching or nesting; installing permanent meteorological (met) towers that are free-standing and avoiding the use of guy-wires, which can provide a collision hazard to birds; installing an onsite electrical collection system underground to minimize the risk for bird collisions or electrocutions; providing information to participating landowners on the possible wildlife interactions resulting from livestock carcass disposal procedures (e.g., attracting scavenging eagles into the area); establishing a worker education and training program for regularly monitoring livestock or wildlife carcasses found near project turbines; and company and contractors compliance with maximum driving speeds of 25 miles per when on the Rock Creek Wind Farm access roads to minimize the chance of injuring or killing wildlife that could serve as an attractant to scavenging eagles.

Compensatory mitigation is proposed, though the Eagle Conservation Plan notes mitigation is not required because the take level of the project will not exceed 5% of the Local Area Population. Within the first year of commercial operations of the Rock Creek Wind Farm, the company will contribute to at least one of several eagle conservation/rehabilitation programs. After 5 years of operations, 13 eagles per year is a threshold over which additional contributions for eagle conservation will be considered and below which no additional contributions will be made.

The Missouri Department of Conservation (Department) is the agency responsible for fish, forest, and wildlife resources in Missouri. The Department actively participates in reviews when projects might affect those resources and appreciates the opportunity to provide comments on this proposed permit and project. The following comments and suggestions are offered to avoid, minimize, and where necessary mitigate impacts to Missouri's fish, forest, and wildlife resources:

1. The bald eagle is a symbol of national significance. In 1782, a committee of the Continental Congress selected the bald eagle as our nation's symbol. Though bald eagles were nearly eliminated as nesting raptors in Missouri by 1890, the bald eagle's recovery is one of the great conservation success stories in the United States. Bald eagle numbers remain well below historic levels.

2. The Department has invested and will continue to invest considerable resources in the restoration, management, and protection of bald eagles. From 1981 to 1990, the Department along with the USFWS and Dickerson Park Zoo in Springfield released 74 young bald eagles in Missouri to reestablish them as nesters. Since 1990, the Department has opportunistically monitored the population of nesting bald eagles in the state. After the bald eagle was delisted from the Endangered Species Act list, the Department has systematically surveyed nesting bald eagles under a USFWS post-delisting monitoring plan. Since 2006, the Department has conducted statewide aerial and ground surveys in 2011, 2016, 2017, and 2018.
3. Bald eagles may live 15 to 25 years in the wild. They begin breeding in the fourth or fifth year and mate for life, typically laying one to three eggs once a year. They choose the tops of large trees for their nests, and have one or more alternate nests within their breeding territory.
4. Missourians and visitors, through the Department's Eagle Watch Program and "Eagle Days" events held throughout the state, are enthusiastically engaged in helping ensure the bald eagle continues to thrive in the state.

Missouri's Eagle Watch Program, initiated in spring 2018, allows volunteers to contribute monitoring information necessary for the conservation and protection of bald eagles in the state. The program is a standardized and comprehensive eagle nest monitoring program using citizen scientists to monitor bald eagle populations and their productive status.

1. Loess Bluffs National Wildlife Refuge in Holt County has held "Eagle Days" events for 40 years (since 1978). In 2017, the event had 12,990 visitors.
2. As noted in the Eagle Conservation Plan (p. 28), the Project site is considered a "Category 2" area for eagles (moderate to high risk). Several bald eagle nests are known to occur out to 10 miles from the project site. Eagle use (e.g., point count surveys conducted to estimate seasonal and spatial use of the study area by birds, particularly bald eagles, golden eagles or large bird types) was documented within the Project area from 2014-2016.
3. Due to the Project's proximity to the Missouri River (approximately 12.5 miles northeast), which acts as a migration corridor and includes several conservation areas and wildlife refuges, the Department is concerned about the potential for adverse impacts to bald eagles, federally protected bird species, and species of conservation concern at the Project.
4. Wind project siting at the landscape scale offers the greatest ability to avoid impacts to bald eagles, and to a lesser degree turbine micro siting can also avoid impacts to eagles. As noted in the USFWS Tier I of the Wind Energy Guidelines, *ideally consultation with*

[USFWS], and state and tribal wildlife agencies is done before wind developers make any substantial financial commitment or finalize lease agreements.

5. While the proposed amount of eagle take that would be permitted within the EMU is below the regulatory threshold for eagle take within the EMU, the Environmental Assessment acknowledges other wind facilities currently operate within the LAP and do not have an ETP. It should be noted the level of take from these facilities, if any, is not known. To provide some context about these other facilities with potential for eagle take:
6. Within the 86-mile LAP, there are 1,240 constructed wind turbines according to the USGS National Wind Turbine Database (as of October 1, 2018), as seen in Figure 1. The Environmental Assessment notes that at the time of this Federal Register notice, no authorizations have been granted for bald eagle take at any of these facilities (Section 1.5.3.1).
7. Within the 86-mile LAP, the Department is aware of the potential for at least an additional 845 MW of wind development in the Missouri portion of the LAP.
8. The Department is concerned about the potential for cumulative effects from industrial-scale wind projects on bald eagles in the area. The potential take of bald eagles (permitted and unpermitted) at existing and potential wind projects in the area could significantly and negatively affect eagle populations at three scales: 1) Eagle Management Unit (EMU); 2) Local Area; and 3) Project Area.

In summary, because of eagle resources in the vicinity of the Project site, it appears an Eagle Take Permit would be useful for the purposes of memorializing allowable take at the Project, to continue monitoring and reporting of actual eagle take from the Project, and monitoring the total eagle take within relevant management scales as new wind projects begin operation in the LAP and EMU. The Department encourages transparency with stakeholders and the public at the five-year check-in for this permit.

Thank you for the opportunity to comment on the proposed federal action. If you have any questions about these public comments, please contact me at (573) 522-4115, extension 3159 or by email at Jennifer.Campbell@mdc.mo.gov.

Sincerely,

JENNIFER K. CAMPBELL
POLICY COORDINATOR